

Appl. No. 10/803,126
Docket No. 9183M&
Paper dated November 17, 2008
Reply to Office Action mailed on May 16, 2008

REMARKS

Claim Status

By virtue of this amendment, claims 1, 14, 15, 18, 20-22 are amended to limit “pyrithione or a polyvalent metal salt of a pyrithione” to zinc pyrithione. Support for the amendment is found in original claims 9 and 16. Claims 4, 9 and 16 are canceled. Accordingly, claims 1-3, 8, 11, 12, 14, 15 and 17-28 are currently pending. No new matter is added.

A Notice of Non-Compliant Amendment was mailed from the USPTO on May 16, 2008 which stated that the response filed on October 23, 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. The Office Action further stated that the previously filed amendment to the claims was non-compliant as each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified.

To comply with the Notice of Non-Compliant Amendment, Applicants herein submit a listing of claims having proper status identifiers, and as such, the individual status of each claim is respectfully believed to be properly identified.

In conclusion, Applicants believe that the above amendments address the deficiencies identified in the Notice of Non-Compliment Amendment (37 CFR 1.121).

The Double Patenting Rejection

Claims 1, 5-9, and 23-25 are provisionally rejected on the grounds of nonstatutory obvious-type double patenting as being unpatentable over claims 1-3, 5, 14-17 and 23-24 of copending Application No. 10/802,166.

In response to the above rejection, Applicants hereinwith submit a Terminal Disclaimer. Applicants respectfully believe that the Terminal Disclaimer serves to address this double patenting rejection. Accordingly, withdrawal of the double patenting rejection is respectfully requested.

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Allowable Claims

Applicants and Applicants' representative sincerely thank the Examiner for the courtesy of a telephonic interview on April 14, 2008. During the interview, zinc lability and augmentation factor were discussed, together with a brief discussion of copending application 10/802,166.

In view of the above-disclosed claim amendments, and the accompanying Terminal Disclaimer, the instant claims are respectfully believed to be in a condition for allowance. Accordingly, a Notice of Allowance is respectfully requested.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the double patenting rejection. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-3, 8, 11, 12, 14, 15 and 17-28 is requested.

Respectfully submitted,
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